

**IN THE
UNITED STATES PATENT AND TRADEMARK OFFICE**

APPLICANTS: Joseph Vaughn Rustad et al.
SERIAL NO.: 10/625,943
FILING DATE: July 24, 2003
TITLE: System and Method of Active Latency Detection for Network Applications
EXAMINER: Frantz B. Jean
GROUP ART UNIT: 2154
ATTY. DKT. NO.: 16010-07269

COMMISSIONER FOR PATENTS
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450

DECLARATION OF FACT BY STUART MEYER UNDER 37 C.F.R. § 1.131

I, Stuart Meyer, hereby declare the following:

1. Devin Morgan prepared United States Patent Application Serial Number 10/625,943, entitled "System and Method of Active Latency Detection for Network Applications," filed on July 24, 2003 (hereafter "the Application") under my supervision.

2. I am providing this declaration to establish documentary proof that the invention described and claimed in the Application was diligently reduced to practice prior to January 31, 2003, the filing date of United States Patent Publication 2004/0153534 A1 to Gibart et al. published August 5, 2004 (hereinafter "Gibart"). The Examiner most recently cited Gibart in the Office Action communication dated September 11, 2007.

Diligence

3. Prior to January 13, 2003, Devin Morgan attended an invention disclosure meeting with the inventors to discuss the technology described in the Application.

4. On January 13, 2003, Devin Morgan reviewed the invention disclosure notes in preparation for an additional disclosure via telephone conference with co-inventor Joseph Rustad, regarding the preparation of the Application. Attached hereto as Exhibit A, is a redacted copy of the recorded time entries of Devin Morgan relating to the Application indicating documentation of the events described above. Exhibit A also references various dates that Devin Morgan prepared the Application, for example on March 9, 2003 and March 10, 2003 along with a record of correspondence with the inventor regarding the review of the draft Application via e-mail on April 28, 2003.

5. On June 17, 2003, Devin Morgan received an email from co-inventor Matthew J. Snyder regarding inventor information for preparation of filing the Application. Attached hereto as Exhibit B is a redacted copy of the e-mail.

6. On July 24, 2003 the Application was filed.

7. Accordingly, diligence was present from prior to the effective date of Gibart (January 31, 2003) to the date of constructive reduction to practice (July 24, 2003).

I hereby declare that all statements made herein of my knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under section 1001 of Title 18 of the United States

Code, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

November 12, 2007
Date

/Stuart P. Meyer/
Stuart Meyer

Date	Initials	Name / Invoice Number	Hours	Description	Matter Number	Index
01/10/2003	1933	DEVIN MORGAN	2 10	REVIEWING MATERIALS REGARDING APPLICATION	16010-07269	3628324
02/28/2003		Invoice=269302	2 10	VANTAGE SUITE FOR PATENT APPLICATION BACKGROUND		
01/13/2003	1933	DEVIN MORGAN	4 20	REVIEWING INVENTION DISCLOSURE AND PREPARING REQUEST FOR SUPPLEMENTAL DISCLOSURE (4 0)	16010 07269	3635855
02/28/2003		Invoice=269302	4 20	TELEPHONE CONFERENCE WITH J. RUSTAD REGARDING PREPARATION OF APPLICATION AND SUPPLEMENTAL DISCLOSURE (0 2)		
02/10/2003	1933	DEVIN MORGAN	0 10	FOLLOWING UP WITH J. RUSTAD REGARDING ADDITIONAL DISCLOSURE MATERIALS	16010 07269	3670311
03/17/2003		Invoice=270322	0 10			
02/14/2003	1933	DEVIN MORGAN	0 20	CORRESPONDING WITH J. RUSTAD REGARDING ADDITIONAL DISCLOSURE MATERIALS.	16010 07269	3670312
03/17/2003		Invoice=270322	0 20			
03/09/2003	1933	DEVIN MORGAN	4 80	PREPARING PATENT APPLICATION.	16010-07269	3687710
04/15/2003		Invoice=271227	4 80			
03/10/2003	1933	DEVIN MORGAN	8 30	PREPARING PATENT APPLICATION.	16010-07269	3693126
04/15/2003		Invoice=271227	8 30			
03/12/2003	1933	DEVIN MORGAN	8 20	PREPARING PATENT APPLICATION.	16010-07269	3693127
04/15/2003		Invoice=271227	8 20			
03/20/2003	1933	DEVIN MORGAN	7 70	PREPARING PATENT APPLICATION	16010-07269	3706196
04/15/2003		Invoice=271227	7 70			
03/21/2003	1933	DEVIN MORGAN	5 30	PREPARING PATENT APPLICATION.	16010-07269	3706197
04/15/2003		Invoice=271227	5 30			
03/26/2003	1933	DEVIN MORGAN	0 20	CORRESPONDING WITH J. RUSTAD REGARDING STATUS OF PATENT APPLICATION PREPARATION AND RELATED INVENTION DISCLOSURE.	16010 07269	3708148
04/15/2003		Invoice=271227	0 20			
04/10/2003	1933	DEVIN MORGAN	0 70	PREPARING PATENT APPLICATION.	16010 07269	3724710
05/21/2003		Invoice=272392	0 70			
04/15/2003	1933	DEVIN MORGAN	6 20	PREPARING PATENT APPLICATION.	16010-07269	3730053
05/21/2003		Invoice=272392	6 20			
04/22/2003	1933	DEVIN MORGAN	7 60	PREPARING PATENT APPLICATION	16010-07269	3738169
05/21/2003		Invoice=272392	7 60			
04/23/2003	1933	DEVIN MORGAN	6 20	PREPARING PATENT APPLICATION (6 2).	16010-07269	3738170
05/21/2003		Invoice=272392	6 20			
04/24/2003	1933	DEVIN MORGAN	1 10	PREPARING PATENT APPLICATION	16010-07269	3738171
05/21/2003		Invoice=272392	1 10			
04/25/2003	1933	DEVIN MORGAN	2 50	PREPARING PATENT APPLICATION.	16010-07269	3738172
05/21/2003		Invoice=272392	2 50			
04/28/2003	1933	DEVIN MORGAN	0 70	REVIEWING DRAFT APPLICATION AND DRAWINGS AND SENDING VIA ELECTRONIC MAIL TO INVENTOR FOR REVIEW	16010-07269	3742645
05/21/2003		Invoice=272392	0 70			
06/03/2003	1933	DEVIN MORGAN	0 30	FOLLOWING-UP WITH J. RUSTAD REGARDING REVIEW OF DRAFT PATENT APPLICATION	16010-07269	3780739
07/18/2003		Invoice=274403	0 30			
06/11/2003	1933	DEVIN MORGAN	0 80	PREPARING FINAL DRAFT OF APPLICATION AND FILING DOCUMENTS AND CORRESPONDING WITH J. RUSTAD REGARDING SAME.	16010 07269	3786311
07/18/2003		Invoice=274403	0 80			
06/13/2003	1933	DEVIN MORGAN	0 30	CORRESPONDING WITH L. MARKMAN REGARDING INVENTOR INFORMATION FOR PREPARATION OF FILING DOCUMENTS.	16010 07269	3786310
07/18/2003		Invoice=274403	0 30			
06/23/2003	1933	DEVIN MORGAN	0 20	CORRESPONDING WITH L. MARKMAN REGARDING INVENTOR INFORMATION FOR PREPARATION OF FILING DOCUMENTS	16010 07269	3803703
07/18/2003		Invoice=274403	0 20			
06/25/2003	1933	DEVIN MORGAN	1 40	PREPARING FILING DOCUMENTS AND INSTRUCTIONS FOR REVIEW AND EXECUTION AND PROVIDING SAME TO	16010 07269	3803702
07/18/2003		Invoice=274403	1 40			

Date	Initials	Name / Invoice Number	Hours	Description	Matter Number	Index
				INVENTORS		
07/24/2003	1933	DEVIN MORGAN	0.70	REVIEWING AND FILING PATENT APPLICATION.	16010 07269	3832572
08/09/2003		Invoice#275206	0.70			
		BILLED TOTALS WORK	69.80	23 records		
		BILLED TOTALS BILL	69.80			
		GRAND TOTALS WORK	69.80	23 records		
		GRAND TOTALS BILL	69.80			

Devin Morgan

From: Matt Snyder [Matthew.Snyder@west.compuware.com]
Sent: Tuesday, June 17, 2003 12:23 PM
To: Devin Morgan
Subject: RE: Inventor Information for Active Latency Detection (16010-0726 9)

Matthew J. Snyder
4177 Cole Court
San Diego CA 92117
US citizen

At 6/17/2003 07:31 AM, Markman, Linda wrote:

>All:
>Would each of you please provide your full name, address, and
>citizenship information to our patent attorney, Devin Morgan, who is
>copied on this message, for the preparation of the Active Latency
>Detection patent application. Please let me know if you have any
>questions.
>
>Devin, I can provide you with the addresses, so if you don't get a
>response, let me know.
>
>Linda
>
>Linda E. Markman
>Senior Counsel
>Legal Department
>Phone: (313) 227-7754
>Fax: (313) 227-9567
>e-mail: linda.markman@compuware.com
>
>ATTORNEY-CLIENT PRIVILEGED COMMUNICATION:
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>-----Original Message-----

>From: Devin Morgan [mailto:DMorgan@fenwick.com]
><mailto:DMorgan@fenwick.com>]
>Sent: Friday, June 13, 2003 2:32 PM
>To: Markman, Linda
>Cc: Rustad, Joseph; Leonard Adgerson
>Subject: Inventor Information for Active Latency Detection (16010-07269)
>
>
>
>Linda,
>
>I need the full names, addresses, and citizenship information for the
>inventors of 07269 Active Latency Detection patent application (based on
>the disclosure submitted by Joe Rustad). I never received part II of
>the invention disclosure form, which would normally include that
>information. The inventors are:
>
>Joe Rustad, Gary Kaiser, Les Murphy, Robb Mills, Matt Snyder, and George
>Lin